

of requiring such certificate by the Land Registry serves no useful purpose and there seems to be no justification for suspending or rejecting a transfer of an instrument duly executed according to sub-section 3(ii) on the ground that such certificate has not been filed together. On the other hand, as the instruments of transfer, Exhibits "A" and "B", were considered fit for registration and, in the absence of any formal defect or clerical error which required rectification, there was no necessity for the registrar to suspend or reject their registration. There was nothing to indicate that the names of the transferees Tan Atian and Chew Ghee Hean had been wrongly entered in the respective instruments of transfer. The instruments of transfer and the documents of titles thereto having been registered, and there being no mistake or error made by the registrar, there is no necessity to have recourse to the provision of section 380. The filing of any certificate or document not required under the Code does not, in my view, affect the fitness for registration of an instrument so long as the conditions under section 301 are complied with and the registrar is satisfied that such instrument is fit for registration.

I have no alternative but to dismiss the appeal. I make no order as to costs in view of what has been submitted and admitted about the wrong practice of requiring the filing of certificates by the registry together with the instruments of transfer duly executed by the applicants.

Appeal dismissed.

Solicitors: *Triptipal Singh & Co.*

ISLAND & PENINSULAR DEVELOPMENT BHD. & ANOR. v. LEGAL ADVISER, KEDAH & ORS.

[O.C.J. (Syed Agil Barakbah J.) June 2, 1973]

[Alor Star — Originating Summons No. 552 of 1971]

Land — Building estate — Mistake in numbering of lots — Wrong grant given to wrong party — Mistake due to applicant's fault — Registrar of Titles refusing to rectify — Whether error can be rectified by Registrar of Titles — National Land Code, s. 380.

The first applicant obtained approval for the sub-division of certain lands into 31 units on which were to be erected 31 units of terrace houses. These terrace houses were comprised in Resurvey Lots 3889 to 3921 in serial order. A grant was issued in respect of each of these resurvey lots also serially numbered from 1152 to 1184. Thus Lot 3889 was comprised in Grant No. 1152 and so on to Lot 3921 which was comprised in Grant No. 1184. As a result of a mistake on the part of the first applicant in the preparation of a site plan of the project the wrong grants were given to the purchasers although they occupied the houses they intended to purchase. Neither the first applicant nor the Registrar of Titles was aware of the mistakes made by the applicants at the time the grants were issued. The first applicant (together with the second applicant who were a subsidiary company of the first applicant and registered chargees of the lands) applied for the correction of the mistakes in the documents of title under section 380 of the National Land Code. The Registrar of Titles refused to do so. The applicants appealed.

A Held: section 380(1)(a) National Land Code is confined to any error or omission made by the Registry of Land Titles and does not extend to that made by the parties in the instruments of transfer presented for registration and accordingly, the registrar had acted in accordance with the requirements of the Code in refusing to rectify the documents of title pertaining to the transfers of lands in dispute.

ORIGINATING SUMMONS.

B *Triptipal Singh* for the applicant.

Tunku Dato' Mukhtar (Legal Adviser) for the respondents.

C **Syed Agil Barakbah J.:** This is an application by way of originating summons for an order requesting the Registrar of Land Titles, Kedah, (hereinafter called 'the registrar') to rectify certain mistakes under section 380 of the National Land Code (hereinafter called 'the Code').

The first applicant, Island & Peninsular Development Berhad, submitted a proposed amalgamation and sub-division plan of Lots 367, 379 and 1904, Mukim of Sungei Patani, District of Kuala Muda, Kedah, and the plan was approved by the Land Office. The approval was for the erection of a row of thirty-one single storey terrace houses. The lot numbers given by the Chief Surveyor run from 3889 to 3921 in serial order. A grant for each lot was subsequently issued corresponding to the lot numbers stated above, also numbered serially, from 1152 to 1184. Subsequent to the approved plan being passed, the first applicant prepared a site plan of the houses for sale to the public but numbered them wrongly by giving the plot numbers 1 to 33 from right to left instead of from left to right according to the numbers of the sub-divided plots. As a result, plot No. 1 which according to the site plan refers to Lot No. 3889 corresponding to grant No. 1152 became plot No. 33 instead of plot No. 1 and so on until plot No. 33 which refers to Lot No. 3921 corresponding to grant No. 1184 became plot No. 1 instead of plot No. 33. Because of the error the purchaser buying one of the houses, e.g. plot No. 1 shown on the site plan, was given grant No. 1152 Lot No. 3889 instead of the corresponding grant No. 1184 Lot No. 3921. Similarly, in the case of the other purchasers. All these purchasers have occupied the correct houses which they intended to purchase but they have been given the wrong grants which have not been registered in their names. In the circumstances they have not acquired ownership of the correct houses by virtue of having been registered in the wrong grant.

H Originally the grants were registered in the name of the first applicant as titles in continuation under section 164(1)(b) of the Code. The purchasers received loans to purchase the houses from the second applicant, a subsidiary company of the first applicant, and have charged their lands to them. The grants were then submitted to the Registrar of Titles, Kedah, **I** for registration together with the forms of transfer (Form 14A) which were filled *inter alia* with the grants and lot numbers in the wrong names of the respective buyers. Neither the applicants nor the registrar were aware of the mistakes at the time the respective grants were issued. It is apparent that the mistakes lie with the applicants who drew up smaller replicas of the

approved sub-division plans annexing them to the agreement of sale to prospective buyers in the wrong order numbering the plots 1 to 33 from right to left instead of from left to right as provided by the approved sub-division plan. The request by the applicants for the correction of the mistakes appearing in the documents of title under section 380 of the Code was turned down by the registrar on the grounds as stated by the learned Legal Adviser in his affidavit which can be summed up as follows:—

- (1) The registrar was not satisfied there was any mistake as the documents of title were not registered in the wrong names.
- (2) Since a purchaser has purchased and occupied the correct house, the respondents maintain he has been registered as proprietor of the right grant because under the Code 'land' includes all things attached to the earth whether on or below the surface.
- (3) Because of the indefeasibility of the title of a registered proprietor under section 340 of the Code any alteration to the instruments of transfer or other documents is *ultra vires* his power.

Now, the main question devolves on the construction of section 380(1) (a) of the Code. Section 380(1) states:—

"(1) Where the registrar is satisfied —

- (a) that any document of title has been registered or issued in the wrong name, or contains any misdescription of land or boundaries, or other error or omission, or
- (b) that any memorial or other entry has been made in error or any document of title or other instrument relating to land, or
- (c) that any memorial or other entry made on any such document of title or instrument itself contains any error or omission,

he may, subject to sub-sections (2) and (3), make such correction on the document or interest in question as may be appropriate in the circumstances of the case."

The section begins with the words "Where the registrar is satisfied". The word "satisfy" means to furnish with adequate proof or to convince. Construing it in its ordinary and natural meaning, the duty lies with the applicants to satisfy the registrar by furnishing him with adequate proof that the registered documents of title have been registered in the wrong names. The words "may make such correction on the document" confer a discretion on the registrar. This function which involves a discretion is quasi-judicial. Once he is satisfied that a mistake or error exists his duty becomes ministerial.

Next comes sub-section (1) (a) which is the main disputed issue. It says to the effect that any document of title has been issued in the wrong name, or any document of title has been registered in the wrong name, or any document of title contains any misdescription of land or boundaries, other error or omission. (The underlining is mine). Referring to the underlined words, in simple language it means that a document of title has been registered by the Land Registry in the name of a person other than the transferee whose name appears in the instrument of transfer and who is one of the parties to the said instrument accepting the said transfer. It points to

A a mistake having been made by the Land Registry; similarly in the case of the document of title containing a misdescription of land or boundaries. The words "or other error or omission" mean any error or omission other than stated above appearing in the document of title due to a mistake having been made by the Registry because under the relevant provisions of the Code the issue and registration of a document of title to land and the memorial are the duties of the registrar.

The question that arises is whether the sub-section can be construed as to extend to a mistake made by the parties to the instrument of transfer (Form 14A) as a consequence of which the document of title is registered in the wrong name. The dominant purpose in construing a statute is to ascertain the intention of the legislature as so expressed. The intention and therefore the meaning of the statute is primarily to be sought in the words used in the statute itself which must be applied as they stand, if they are plain and unambiguous. That is so however strongly it may be suspected that the result does not represent the real intention of Parliament. Now, registration of a document of title is based on the instrument of transfer according to Form 14A as required by sections 215, 217 and 218 of the Code. It requires every transfer form must be signed by both the transferor and the transferee showing the assent of both parties and attested by appropriate persons certifying the signatures thereon are those of the parties concerned who appear before them. At the back of the instrument under the Schedule of Land and Interest the lot number and the description and title of land concerned, etc. are inserted. The duty of the registrar on receipt of the instrument of transfer is to determine its fitness for the purpose of registration. (Section 297). If he considers it fit and is accompanied by the necessary documents required by section 294 he registers it. If however the instrument is not fit for registration he rejects it forthwith. If the unfitness consists solely of a formal defect or clerical error or is not accompanied by other necessary documents he has to suspend registration for a period not exceeding fourteen days to enable the defect or error to be rectified or the documents to be produced. He has to give notice to the person or body concerned specifying the period of suspension and the reasons therefor. At the expiry of such period he shall either register the instrument, if the defect or error has been remedied, or otherwise reject it. (Section 298). His powers in this regard are limited under section 303 where, *inter alia*, he is not concerned whether any transfer constitutes a breach of an agreement or the like. In other words, as long as the instrument of transfer is in order and fit for registration according to the requirements of the Code, his duty is to register it. It is to be noted that the provisions for considering fitness of the instrument of transfer provide adequate opportunity for remedying any formal mistake or error or by filing necessary documents required by the parties to the instrument in order to satisfy the registrar that it is fit for registration on rectification within the statutory period allowed during suspension. In the light of the above, it is my considered judgment that the intention of Parliament is to confine the error or omission in sub-section

(1) (a) of section 380, i.e. occurring after registration, to one made by the Registry of Land Titles and not to extend to that made by the parties in the instrument of transfer presented for registration. I say so because once the instrument of transfer is registered the title of the transferor passes and vests in the transferee together with the benefits of any registered interests then enjoyed with the land. (Section 215(2)). The title of the registered proprietor becomes indefeasible giving him a right against all the world except in the case of fraud or misrepresentation where he or his agent is a party or privy. Such indefeasibility extends to an innocent purchaser in good faith for valuable consideration. (Section 340).

Registration of a document of title by the registrar is made in accordance with section 304 by (a) making a memorial under his hand and seal on the register of document of title and (b) completing under his hand and seal that part of the Heading on Form 13A shown as reserved for the Registry use on the instrument itself. The time and date of registration are taken as the time and date of presentation of the instrument under Chapter 1. In other words, registration of an instrument includes the making of a memorial which according to sub-section (3) of section 304 consist of a short description of the nature and effect of the instrument, the names of the parties thereto and a statement of its number in the Presentation Book, the reference number and the date from which registration is effective. The effect of the memorial is that it becomes conclusive evidence of registration to which it refers and the effective time and date thereof. To my knowledge there is no judicial authority so far as regards to the precise scope of the proper registering authority to correct or cancel any document of title issued in the wrong name or in error. However as regards a memorial the accepted view seems to be that the registering authority possesses no power under the omnibus provision of section 239 of the Land Code of 1926 to alter or rectify it "for the moment a memorial is made he is functus so long as it faithfully records the effect of the instrument presented for registration; the memorial is not brought into existence by any ministerial or quasi-judicial 'error' within the meaning of section 230(e) or section 239 of the Code." (See *The Torrens System in Malaya* by S. K. Das at page 170). This is so because a memorial is made conclusive evidence of registration (section 90(ii)), and by reason of section 96 the indefeasible title of a *bona fide* purchaser for value is maintained. (Das, *supra* page 172).

Now, section 239 of the 1926 Code has been replaced by section 380 of the present Code. The vital point to be noted is that the names of the parties to the instrument are recorded in the memorial on the register document of title according to the requirements of both the former and the present Code. The provisions of the two sections are similar except for the clause under consideration which has been added in section 380. Since the names of the parties to the instrument of transfer are one of the statutory conditions for inclusion in the memorial as I have pointed out earlier, any rectification of the name of the transferee who now becomes the registered proprietor in the document of title which has been issued,

A will undoubtedly involve rectification of the memorial. I am therefore of the opinion that in the circumstances of the present appeal the registrar has acted in accordance with the requirements of the Code in refusing to rectify the documents of title pertaining to the transfers of land in dispute. This court ought not to interfere in the matter so as not to disturb completed transactions.

B The last point relates to indefeasibility of title of the registered proprietor under section 340 of the Code. A number of passages in *The Torrens System in Malaya* were submitted by the learned counsel for the applicants in support of his argument to bring in equitable fraud or misrepresentation which may render rectification of the error or mistake in the document of title available. The main issue in the present appeal, however, relates to the construction of section 380 of the Code and not on the validity or otherwise of the alleged contract. If the decision of this court, declaratory or otherwise, on the validity of the contract entered between the parties prior to the execution of the instruments of transfer is to be sought, on the ground of fraud or misrepresentation, the terms and conditions of the alleged agreement, its nature and relationship with the instrument of transfer and its connection with the charges of the land in question to the second applicant must be adequately presented to enable this court to consider the whole issue. I am of the opinion therefore that
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E the issue is not relevant.

Further, the present application does not refer only to rectification of the wrong names registered in the documents of title but involves other corrections and cancellations. The second prayer seeks amendments to the schedule in the instruments of transfer and the charges by the applicants' solicitors on their behalf. Although the powers of the court provided by section 417 of the Code are wide, I can find no provision whereby such an order can be made to amend an instrument or charge already signed, sealed and executed and acted upon by the parties. Chapter 6 deals only with cancellation of registration and charges by the registrar on grounds specified therein.
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G (See sections 312 to 314). It will involve rectifications in all relevant records including the memorials. Prayer 3 will involve cancellation and not rectification or alternatively alteration of the lot numbers of the subdivided lots originally provided by the Chief Surveyor.

In the circumstances, I have no alternative but to dismiss the appeal with costs.

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Appeal dismissed.

Solicitors: *Triptipal Singh & Co.*

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